

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NewMarket Pharmaceuticals, LLC,

Plaintiff,

v.

VetPharm, Inc.,

Defendant.

Civil Action No. 19-cv-6405

Hon. Charles J. Siragusa

**REPLY DECLARATION OF DOUGLAS A. FOSS IN SUPPORT
OF DEFENDANT’S MOTION TO STAY OR DISMISS ACTION**

Douglas A. Foss, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York and admitted to practice before this Court. I represent defendant VetPharm, Inc. (“VetPharm”) in this action.

2. I make this reply declaration in further support of VetPharm’s motion (i) to stay this action under Rule 41(d) of the Federal Rules of Civil Procedure until plaintiff NewMarket Pharmaceuticals, LLC (“NewMarket”) reimburses VetPharm for its costs and attorneys’ fees incurred in connection with the third-party action filed in the United States District Court for the Western District of Missouri, captioned *VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC*, Civil Action No. 5:18-cv-6147 (the “Missouri Action”); and (ii) to dismiss the complaint in this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

3. Attached as **Exhibit 1** is a true and correct copy of an email dated March 16, 2016 from Mark Ridall, CEO of NewMarket, to Kevin Speltz of VetBridge. It was previously filed as Exhibit C to Mr. Speltz’s declaration at Docket No. 26-2 in the Missouri Action.

4. For the reasons set forth in the accompanying reply memorandum of law, VetPharm respectfully requests that the Court grant its motion, stay this action until NewMarket has paid VetPharm's costs and attorneys' fees in connection with the Missouri Action (the amount of which to be established upon further submissions), and, upon the lifting of the stay, dismiss each of NewMarket's claims for relief with prejudice.

Dated: Pittsford, New York
November 27, 2019

/s/ Douglas A. Foss
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